

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

September 1, 2016

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Burwell:

We write to request information on the Department's handling of potential violations of the federal Anti-Deficiency Act (ADA), including several violations reported in the Department's 2015 financial audit.

The ADA, codified in Title 31 of the United States Code, prohibits federal employees from spending monies not appropriated by Congress, among other limitations.¹ The statute attaches liability to individual conduct; in other words, when a violation of the statute is identified, a responsible individual (or individuals) should also be identified. Federal employees who violate the act are subject to administrative penalties, such as a suspension from duty without pay or removal from office,² and criminal penalties, up to and including imprisonment.³

When a department finds an ADA violation, the agency head "shall report immediately to the President and Congress all relevant facts and a statement of actions taken."⁴ OMB Circular A-11 sets forth the information that must be included in letters reporting ADA violations. The letters must identify, among other information:

- The position of the officer(s) or employee(s) responsible for the violation;
- All facts pertaining to the violation; and

¹ See, e.g., 31 U.S.C. §§ 1341(a), 1342, & 1517.

² 31 U.S.C. §§ 1349(a), 1518.

³ 31 U.S.C. §§ 1350, 1519.

⁴ 31 U.S.C. §§ 1351, 1517(b).

- A statement of the administrative discipline imposed and any further action taken with respect to the individuals involved in the violation.⁵

Since fiscal year 2010, HHS has reported more than \$1.5 billion in ADA violations.⁶ For example, in fiscal year 2014, HHS reported that approximately 950 individuals were improperly paid approximately \$125 million during the period from fiscal year 1997 to fiscal year 2012, in violation of a cap included in the 1993 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.⁷ In fiscal year 2012, HHS reported three violations totaling over \$10.6 million when the Indian Health Service obligated money greater than the amount appropriated for Contract Support Costs.⁸ And, in fiscal year 2011, HHS reported that it improperly spent nearly \$1.5 billion in a variety of Department accounts between fiscal years 2002 and 2010.⁹ However, in none of these instances did HHS hold any individuals responsible for the identified violation.

Potential ADA violations committed by HHS employees are typically investigated by HHS itself, and are only reported to the Congress and other required entities if the Department finds a violation. Yet, even when your Department has committed a violation and reports it as required, it has repeatedly failed to identify a responsible individual and take any administrative actions for violations of the ADA. This is a troubling pattern.

HHS is currently investigating at least three potential ADA violations. The Department's FY 2015 Agency Financial Report identified three possible ADA violations. The Management's Discussion and Analysis of the audit report briefly mentioned the potential violations in the Legal Compliance section. The MD&A read, "HHS management is taking necessary steps to prevent future violations. With respect to three possible issues, we are working through investigations and further assessment where necessary."¹⁰ Ernst and Young provided further information on the potential violations in the Report of the Independent Auditors. Ernst and Young stated that HHS management discovered the violations during fiscal year 2015, and that two potential violations related to FY 2014 and FY 2015 obligation of funds for conference spending and that a third potential violation related to a Presidential appointment.¹¹ Further, and also in the FY 2015 Agency Financial Report, the HHS Office of Inspector General identified the potential for ADA violations as a management challenge for the Department.¹²

⁵ OFFICE OF MGMT. & BUDGET, OMB CIRCULAR NO. A-11, SECTION 145, REQUIREMENTS FOR REPORTING ANTIDEFICIENCY ACT VIOLATIONS (2016).

⁶ See, e.g., U.S. Gov't Accountability Office, *Antideficiency Act Reports-Fiscal Year 2014*, available at <http://www.gao.gov/assets/670/669586.pdf> at 7; U.S. Gov't Accountability Office, *Antideficiency Act Reports-Fiscal Year 2012*, available at <http://www.gao.gov/assets/660/650531.pdf> at 17; U.S. Gov't Accountability Office, *Antideficiency Act Reports-Fiscal Year 2011*, available at <http://www.gao.gov/assets/600/590553.pdf> at 21

⁷ U.S. Gov't Accountability Office, *Antideficiency Act Reports-Fiscal Year 2014*, available at <http://www.gao.gov/assets/670/669586.pdf> at 7.

⁸ U.S. Gov't Accountability Office, *Antideficiency Act Reports-Fiscal Year 2012*, available at <http://www.gao.gov/assets/660/650531.pdf> at 17.

⁹ U.S. Gov't Accountability Office, *Antideficiency Act Reports-Fiscal Year 2011*, available at <http://www.gao.gov/assets/600/590553.pdf> at 21.

¹⁰ U.S. Dep't of Health & Human Serv., Fiscal Year 2015 Agency Financial Report at 30.

¹¹ *Id.*

¹² *Id.* at 244.

On February 24, 2016, you appeared before the Subcommittee on Health for a hearing on the Department's fiscal year 2016 budget request. After that hearing, U.S. Rep. Gus Bilirakis (R-FL) submitted questions to you for the record asking for additional information about the potential ADA violations. In your July 1 response, you indicated that the Department is currently reviewing whether the obligations in question violated provisions in the appropriations act or section 749 of division D of Public Law 111-8.¹³ Such a violation would, in turn, create an ADA violation. The Committee is concerned that, nearly a year after the audit publically identified the potential ADA violations, the Department has not completed its review and determined if any ADA violations did, in fact, occur.

Accordingly, the Committee requests a briefing by your staff to understand the process by which HHS identifies, investigates, and reports potential ADA violations, including the three potential violations identified in the FY 2015 audit. The Committee also requests a detailed explanation of the current status of the investigation into the three potential violations identified in the FY 2015 audit, including a date by which HHS will complete its investigation, by September 15, 2016. Please contact Adam Buckalew or Jennifer Barblan of the Committee staff at 202-225-2927 with any questions and to arrange a briefing on these issues.

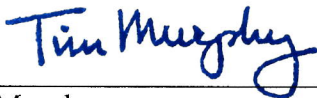
Sincerely,



Fred Upton
Chairman
Committee on Energy and Commerce



Joseph R. Pitts
Chairman
Subcommittee on Health



Tim Murphy
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Frank Pallone, Jr., Ranking Member
Committee on Energy and Commerce

The Honorable Gene Green, Ranking Member
Subcommittee on Health

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

¹³ *The Fiscal Year 2017 HHS Budget: Hearing before the Subcomm. on Health of the H. Comm. on Energy & Comm.*, 114th Cong. (2016) (Response to Questions for the Record) available at <http://docs.house.gov/meetings/IF/IF14/20160224/104521/HHRG-114-IF14-Wstate-BurwellS-20160224-SD002.pdf>.